

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of G. SIKORSKI, Minor.

UNPUBLISHED

June 19, 2014

No. 319529

Branch Circuit Court

Family Division

LC No. 11-004521-NA

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Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals from the trial court order that terminated her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if the child is returned to parent). Because the trial court did not clearly err by finding that statutory grounds for termination had been established or by finding that termination was in the child's best interests, we affirm.

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. MCR 3.977(F); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court terminated respondent's rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

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(c) The parent was a respondent in a proceeding brought under this chapter, 182 days or more have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

#### I. MCL 712A.19b(3)(c)(i)

Termination is proper under MCL 712A.19b(3)(c)(i) where "the totality of the evidence amply support[ed] that [the respondent] had not accomplished any meaningful change in the conditions" that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Here, the trial court entered the order of adjudication on June 7, 2011 and the initial dispositional order on July 14, 2011. The termination hearing was held on November 21, 2013. Thus, "182 or more days" had "elapsed since the issuance of an initial dispositional order."

The conditions that led to adjudication were respondent's inability or unwillingness to support herself and the child and her poor parenting skills arising from her lack of supervision over the child. At the time of termination, the trial court found that the conditions of adjudication continued to exist because respondent was unable to support herself or obtain assistance and she remained unable to effectively parent the child.

With respect to parenting skills, Child Protective Services (CPS) became involved after the child "escaped" respondent's care in April 2011 and May 2011. After the trial court assumed jurisdiction over the child, he again left respondent's care without her knowledge and was found outside respondent's home. As a result of respondent's failure to supervise the child, he was taken into care on August 12, 2011. Between August 2011 and March 2012, respondent was provided with Families Together/Building Solutions (FTBS) services and a parenting aide; in March 2012, the FTBS services ended because of respondent's noncompliance. In August 2012, respondent began intensive reunification services. On August 12, 2012, one year after the child had been taken into care, the alarms above the doors in respondent's apartment were not set and the child left respondent's apartment. In September 2012, the FTBS case worker believed that respondent's poor parenting skills and inability to notice safety concerns still needed to be addressed. The record reveals that respondent failed to consistently interact with the child and grew frustrated with him at times. In February 2013, Lisa Velez, an infant mental health

specialist, observed a trauma bond between respondent and the child and noted that respondent relied on the child to care for her other minor child;<sup>1</sup> parenting time was suspended on February 5, 2013 because of the child's increasingly poor behavior. His behavior improved during the time that he did not see respondent.

At the May 2, 2013 termination hearing, respondent was unable to reiterate the parenting skills that she had been taught, even though she had participated in numerous services and completed multiple parenting classes. After the trial court found that it would not be in the child's best interests to terminate respondent's parental rights and denied the October 2012 termination petition, respondent had a parenting session with the child for the first time in seven months. The child did not recognize respondent initially. In October 2013, respondent began to work with FTBS for a second time. The record supports that, in the weeks leading up to the November 2013 termination, respondent failed to redirect and control the child; she also demonstrated that she did not understand his food allergies. Although the child had extreme emotional, behavioral, and intellectual issues, respondent minimized the child's issues and refused to take responsibility for her part in creating them. As of November 2013, Michelle Lock, a Department of Human Services (DHS) case worker, believed that respondent's parenting skills had not improved during the 2-1/2-year proceeding, and Randall Hester, an FTBS worker, believed that respondent required further services. Nonetheless, respondent did not believe that she required further assistance to improve her parenting skills. Thus, contrary to respondent's arguments on appeal, the record overwhelmingly supports that respondent failed to improve her parenting skills during the proceedings.

With respect to respondent's ability to support herself and the child, the record indicates that respondent was either unable or unwilling to maintain employment in the past. During the 2-1/2-year proceeding, respondent only maintained employment for two weeks and relied on Helen Beard, respondent's grandmother, to pay her bills. Respondent was not able to receive cash assistance from the state because she failed to comply with employment requirements in the past. Less than two months before termination, respondent's food assistance and medical insurance were terminated because she failed to turn in the required documentation. At the time of the November 21, 2013 termination hearing, respondent had yet to submit required information. This was the case even though respondent relied on the benefits to assist her with caring for her other minor child, who was still in her care. Further, respondent demonstrated a lack of commitment to attending and completing cosmetology school. Thus, respondent failed to establish that she could independently care for herself, let alone the child, at the time of termination. "[T]he totality of the evidence amply" supports that respondent "had not accomplished any meaningful change" in the conditions that led to adjudication. See *In re Williams*, 286 Mich App at 272.

In deciding whether to terminate under (c)(i), the trial court had to determine whether respondent would have been able to rectify the barriers that led to adjudication within a reasonable time considering the age of the minor child. See MCL 712A.19b(3)(c)(i). The record

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<sup>1</sup> This child was not subject to these child protective proceedings.

establishes that, during the 2-1/2-year proceeding, respondent was provided with extensive services to address her parenting deficits. Despite this, respondent failed to demonstrate an improvement. Further, at the time of the November 21, 2013 termination hearing, respondent did not see a problem with the parenting techniques that she implemented before the child entered care. Nor did she believe that she needed assistance in the future from the DHS. The record clearly supports that respondent had a poor history of maintaining employment; she relied on Beard to support her during the proceedings. Respondent estimated that she would complete school in December 2014. Given that respondent consistently failed to attend class less than one month after the program began, the record does not support that respondent would complete the program by December 2014, if at all. Given that respondent was either unable or unwilling to support herself, there is no evidence that she would be able to do so within a reasonable time in the future.

At the time of termination, the child was almost six years old and had been in care for over two years. The child had extreme emotional, behavioral, and intellectual problems and Dr. Haugen, a psychologist, testified that the child required permanence. Given the amount of time that the child spent in care, his strong need for permanence, and respondent's inability or unwillingness to make progress, the child could not wait an indefinite amount of time for respondent to improve. See *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (holding that, because the Legislature did not intend for children to be left in foster care indefinitely, it is proper to focus on how long it will take a respondent to improve *and* on how long the involved children can wait). Thus, the trial court did not clearly err when it determined that conditions continued to exist and there was not a reasonable likelihood that respondent would rectify the conditions within a reasonable time.

## II. MCL 712A.19b(3)(g)

A trial court may terminate parental rights under MCL 712A.19b(3)(g) where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” In *In re CR*, 250 Mich App at 196, we upheld termination pursuant to MCL 712A.19b(3)(g) where “there [was] no real evidence that” the respondent *benefitted* from the services offered and, as a result, could not “provide proper care or custody for the child.”

When the proceedings began, respondent was unable to provide the child with proper care and custody because she had consistently failed to supervise the child and was unable to support herself, either by virtue of employment or maintaining her public assistance. The trial court found that respondent was unable to provide proper care at the time of termination because she was unable to support herself and she remained unable to effectively parent the child.

Respondent was ordered to address her poor parenting skills by participating in services and attending a parenting class. After the child was taken into care in August 2011, respondent was provided with a parenting aide, FTBS services, and intensive reunification services. The FTBS services ended after six months because respondent was noncompliant. Further, over one year after the child was taken into care, respondent failed to set the alarms over the doors in her apartment when the child was present. In September 2012, Dana Dickerson, a reunification

worker, believed that respondent's parenting skills and ability to identify safety concerns still needed to be addressed. Respondent began working with Hester from FTBS. Nonetheless, in October 2013, respondent continued to fail to redirect and control the child and demonstrated that she did not understand his food allergies. At the November 2013 termination hearing, respondent minimized the child's extreme emotional, intellectual, and behavioral issues and refused to take responsibility for her part in creating them. As of November 2013, Lock believed that respondent's parenting skills had not improved during the 2-1/2-year proceeding; however, respondent did not believe that she required further assistance to improve her parenting skills. Thus, the record establishes that respondent did not benefit from the services that she was provided to address her poor parenting skills.

Additionally, respondent was unable to independently provide for herself or the child at the time of termination. Although Moore and Hester offered to provide respondent with assistance in locating and maintaining employment, respondent relied on Beard for financial support during the duration of the proceeding, allowed her public benefits to lapse less than two months before termination, and demonstrated a lack of commitment to completing school. Because "there is no real evidence that" respondent benefitted from the extensive amount of services that she received during the 2-1/2-year proceeding, the trial court did not err by finding that respondent could not provide the minor child with "proper care or custody" at the time of termination. See *In re CR*, 250 Mich App at 196. For these reasons, as well as those discussed in Section I, the trial court did not clearly err by finding statutory grounds to terminate respondent's parental rights under MCL 712A.19(b)(3)(g).

### III. MCL 712A.19b(3)(j)

Finally, the trial court did not clearly err by finding that petitioner established, by clear and convincing evidence, that statutory grounds for termination of respondent's parental rights existed under MCL 712A.19b(3)(j). Termination is proper under MCL 712A.19b(3)(j) when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." The harm to the child contemplated under MCL 712A.19b(3)(j) includes emotional harm as well as physical harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

When the child was five years old, he was diagnosed with reactive attachment disorder, an intellectual disability, and post traumatic stress disorder. Expert testimony established that the child's emotional and behavioral issues were interfering with his intellectual abilities. In order to avoid emotional behavioral problems in the future, the child required structure, consistency, and a caregiver who could help him process his feelings. The record indicates that respondent was unable or unwilling to provide the child with this necessary structure and consistency. Notably, at the November 2013 termination hearing, respondent minimized the child's emotional, intellectual, and behavioral difficulties and refused to accept responsibility for her role in creating them. Accordingly, the trial court did not clearly err by finding that statutory grounds to terminate respondent's parental rights existed under MCL 712A.19b(3)(j).

#### IV. BEST INTERESTS

Respondent also argues that termination of her parental rights was not in the child's best interests. "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

The procedural history of the court's best-interests ruling is relevant to our analysis. On June 5, 2013, after the initial termination hearing, the court found that the above-discussed statutory grounds had been established by clear and convincing evidence. However, the court declined to terminate respondent's parental rights, finding that termination was not in the child's best interests because petitioner had failed to establish that termination of father's parental rights was proper.<sup>2</sup> Essentially, the court gave respondent one more chance to prove that she was capable of properly caring for the child. Unfortunately, respondent failed to take advantage of this opportunity.

Most important to the court's best-interests ruling was the child's particular medical and emotional needs, which respondent does not appear to understand or be able to provide for. The court wrote that the psychologist testified that:

. . . [the child] had significant deficits in many facets of this life. Dr. Haugen testified in part that the minor child has a high cognitive development impediment as well as emotional impediment with neuropsychological deficits. The minor child had high poor ability to cope and many of his problems continue with minimal competencies compared to other child to deal with the demands of everyday life. There was a further diagnosis of Reactive Attachment Disorder, Unspecified Intellectual Disability, Post Traumatic Stress Disorder, Mild and Chronic.

In sum, the child presents special needs that require an intense level of supervision and care that respondent is incapable of providing. From the initial termination hearing until final termination, respondent failed to properly educate herself about the child's medical needs, which appear to have been, at minimum, exacerbated by respondent's failures to provide a consistent and nurturing environment. As the court wrote, respondent "still does not understand the needs of the minor child and refuses to, or is incapable of conceptualizing the needs of this child[.]"

We reject respondent's argument that the child's issues would be resolved if he was returned to her care. Expert testimony established that the child required "predictable routines" that were "adhered to pretty consistently" and a caregiver who helped him understand and process his feelings. The record indicates that respondent grew frustrated with the child at times and had difficulty caring for both him and his younger sibling concurrently. During the

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<sup>2</sup> The child's father, who later voluntarily relinquished his parental rights, is not party to this appeal.

proceeding, respondent entirely failed to establish that she was capable of providing consistency or routine. As discussed, she minimized the minor child's extreme issues. The child's behavior and emotional health improved in the home of the foster parents. Although the foster parents were unable to care for the child on a long-term basis, the caseworker believed that he was "adoptable," and the foster parents agreed to care for the child until a permanent placement was found. Accordingly, the trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ William B. Murphy  
/s/ Douglas B. Shapiro  
/s/ Michael J. Riordan